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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON

12 DENNA NICK, an individual,

13 Plaintiff,

No.

14 vs.

COMPLAINT AND DEMAND FOR
JURY TRIAL

15 BNSF RAILWAY COMPANY, a
16 Delaware Corporation,

17 Defendant.

18
19 COMES NOW the Plaintiff, Denna Nick, and for her claims and cause of
20 action against Defendant states and alleges as follows:
21

22 **1. PARTIES AND JURISDICTION**

23 COMPLAINT AND JURY DEMAND
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1.1. At all times relevant to this suit, Plaintiff was a resident of Spokane, Washington.

1.2. At all relevant times Defendant BNSF Railway Company (“BNSF”) was and is headquartered in Fort Worth, Texas, and is a common carrier for hire by rail in and throughout the several States of the United States and for the purpose of operating said railroad did and does own, possess, operate and maintain, railroad cars, tracks, and other equipment in and about the State of Washington.

1.3. At all material times, Plaintiff, was employed by the Defendant in activities which were in furtherance of Defendant's interstate operations;

1.4. The Court has jurisdiction through 45 U.S.C. ‘51 et seq., commonly known as the Federal Employer’s Liability Act (“FELA”) and this action is timely commenced under said statute.

2. FACTUAL ALLEGATIONS

2.1. On March 29, 2021, Plaintiff was on-duty working with BNSF in its Yardley railyard, in the State of Washington.

2.2. While on duty, BNSF instructed Plaintiff to move a locomotive from one track to another. The engine’s automatic handbrake was defective and

1 could only be operated on “manual.” Despite the crew’s best effort, the
2 handbrake would not release.

3 2.3. Per BNSF policy, Plaintiff and another worker contacted the BNSF
4 mechanical desk to get guidance on how to proceed.

5
6 2.4. BNSF’s mechanical desk instructed the crew to “pull on a chain” and
7 simultaneously have another person “pull on the wheel” to get the brake
8 unstuck.

9
10 2.5. Plaintiff repeated the instructions and clarified that is what the mechanical
11 desk wanted the crew to do. The mechanical desk again repeated the
12 instructions, which Plaintiff followed.

13 2.6. Plaintiff was injured while following BNSF’s instructions and orders.

14
15 2.7. Plaintiff suffered serious injuries because of BNSF’s instructions and
16 faulty equipment.

17 **3. FIRST CAUSE OF ACTION: FELA NEGLIGENCE: 45 USC §51, et**
18 **seq.**

19 3.1. Plaintiff hereby incorporates by reference paragraphs 1.1 through 2.7
20 above.

1 3.2. The injuries sustained on or around March 29, 2021, by Plaintiff and the
2 resulting damage came as a result, in whole or in part, of the negligence of
3 Defendant BNSF its agents, employees, and officers and in violation of the
4 FELA, 45 U.S.C. 51 et. seq., to wit, Defendant BNSF was negligent in:
5

- 6 a. Failing to provide Plaintiff with a reasonably safe place in which to
7 work;
8 b. Failing to provide proper and reasonably safe equipment and
9 resources;
10 c. Failing to comply with applicable provisions of the code of federal
11 regulations;
12 d. Failing to provide adequate manpower to safely complete the job;
13 e. Failure to provide sufficient training and resources;
14 f. Violating the Locomotive Inspection Act;
15 g. Violating the Safety Appliance Act;
16 h. Violating 49 C.F.R. § 232.105;
17 i. Violating 49 C.F.R. § 229;
18 j. Violating 49 C.F.R. § 231;
19 k. Requiring Plaintiff to perform work activities that were unsafe;
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- 1 l. Instructing Plaintiff to operate a handbrake that was defective and/or
- 2 malfunctioning;
- 3 m. Failing to provide trained maintenance and mechanical
- 4 professionals to maintain and repair the equipment; and
- 5 n. Other acts of negligence to be discovered.

6 3.3. That as a result of Defendant's conduct, Plaintiff has lost wages, has a
7 permanent loss of earning capacity, has and will continue to suffer physical
8 pain and suffering, has and will continue to suffer a loss of enjoyment of
9 life, and has and will continue to suffer emotional loss.

10 3.4. That in an effort to treat her injuries, Plaintiff has incurred in the past and
11 will incur in the future expenses for hospital, nursing and other medical
12 care, the exact amount of which cannot be accurately estimated at this time.
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16 **WHEREFORE**, Plaintiff prays for judgment against the above-named
17 Defendant, BNSF Railway Company, a Delaware corporation, for recovery of
18 reasonable damages in an amount sufficient to fully compensate Plaintiff for the
19 damages and losses suffered, together with all costs, disbursements, and whatever
20 other relief the Court deems appropriate.
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1 **PLAINTIFF DEMANDS TRIAL BY JURY.**

2 DATED this 29th day of September, 2022.

3 s/Michael T. Howard, WSBA No. 29530
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5 Professional Service Corporation
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1 I hereby certify that on September 29, 2022, I electronically filed the
2 foregoing with the Clerk of the Court using the CM/ECF System which will send
3 notification of such filing to the following:
4

5
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